

Sensitive human rights issues within the free trade agreement between Switzerland and the People's Republic of China

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Executive Summary

The present study outlines potential human rights issues that might arise for Switzerland by concluding a bilateral free trade agreement (FTA) with the People's Republic of China and puts them in a context with existing human rights obligations as well as possible options on how to address these challenges.

Negotiations between the two countries have been going on since the beginning of 2011, with three rounds already held. The foreign policy commission of the Swiss national council has ordered the State Secretariat for Economic Affairs, which is leading the negotiations with China, to integrate into the FTA a chapter addressing human rights.

The study's analytical structure starts by outlining Switzerland's human rights obligations under both national and international law. While the Swiss government's current case-by-case approach with regard to foreign policy coherence may have its systematic deficits, it also allows focusing on the specificities of each particular case. The current FTA negotiations with China are a prime example of such a case where policy coherence is essential in striking a balance between the different interests at stake – fostering economic growth and investment, while at the same time providing effective means to prevent human rights violations which might occur within the effects of a successfully negotiated FTA.

A first conclusion is then drawn, finding that Switzerland is under the clear obligation to act in a *coherent* matter, in this context meaning that human rights have to be an essential element in Switzerland's foreign (economic) policy. Additionally, emphasis is put on the horizontal human rights obligations which result from the state duty to protect, further specified by John Ruggie's Guiding Principles on Business and Human Rights.

In a second part, the study maps the human rights issues generally present in China on the one hand, and the potential adverse human rights impact of a successful FTA with Switzerland on the other, resulting in an intersection area of overlap.

Flagging the potential risks resulting from a FTA between Switzerland and China has proven to be a difficult endeavour: Since detailed information of the ongoing negotiations is not publicly available, the study worked with assumptions, based on various sources, among them the joint feasibility study between the two countries issued in August 2010. Further indicators are drawn from FTAs already in force for Switzerland and China respectively, as well as others currently being negotiated by Switzerland. While it is impossible to make a detailed prognosis of the FTA's contents, there are indications that Switzerland might aim at including provisions strengthening



intellectual property beyond the WTO-agreed TRIPS. This could be problematic from a human rights viewpoint, especially with regard to the right to food and the right to health, as has been shown in various other studies on this specific subject. Furthermore it is expected that the anticipated overall increase in trade between the two countries might further strain certain obligations in the context of labour and minorities rights although, admittedly, direct causality is difficult to prove in this regard.

The study goes on to offer a brief overview of possible instruments to implement human rights provisions either in, or alongside FTAs, with the goal of mapping possible best practices. Among these instruments are human rights impact assessments, aiming at providing guidance for states either before or after concluding FTAs. Additionally, several models varying in enforceability as well as the form are described: Chapters embodied within FTAs, side agreements and memoranda of understanding are all options already in use by some states. It is suggested that a systematic approach mapping the various existing instruments would be helpful in order to determine such best practices.

The limited scope of the present study clearly puts it as a first step in a more complex process of thoroughly analyzing the potential impact of a Swiss-Chinese FTA, as well as possible instruments to mitigate adverse human rights effects. It therefore concludes with several suggestions on how to follow up on the subject of possible human rights issues in the context of the FTA between Switzerland and China in order to facilitate further discussion with relevant stakeholders.

First and foremost, Switzerland has to implement its state duty to protect by actively developing effective instruments, drawing from the substantial options presently available. Several other states have already included human rights provisions in their FTAs, some of them with China. These experiences should be used and transformed into best practices tailored to Swiss foreign economic policy.

A comprehensive list of possible human rights issues faced by Swiss enterprises can hardly be established. However, we suggest a two-faced analysis covering the Swiss members of the UN Global Compact: Combining both the businesses by means of self-evaluation and laying out their key challenges, as well as external reviews should result in a more detailed approximation of the relevant issues at hand.

Furthermore, alongside the direct business activities in China, import-based human rights risks should not be overlooked.

Finally, it is necessary to further continue and deepen the dialogue with relevant stakeholders, especially the State Secretariat of Economic Affairs.